



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MAY 6 2011

Jefferey V. Stuckey  
Dickinson Wright PLLC  
215 S. Washington Square  
SUITE 200  
Lansing, Michigan 48233-1816

RE: MUR 6276  
Robert Thompson

Dear Mr. Stuckey:

On April 27, 2011, the Federal Election Commission ("Commission") notified your client, Robert Thompson, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 26, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that your client, Robert Thompson, violated 2 U.S.C. § 441a(a)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana J. Peña-Wallace, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Peter G. Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** Gaylen Byker; Thomas Celani; **MUR: 6276**  
5 Vicki Celani; Michael Ferrantino;  
6 Kellie Ferrantino; Michael Jandernoa;  
7 Susan Jandernoa; John Kennedy;  
8 Nancy Kennedy; Robert Lynas;  
9 Joyce Lynas; William Parfet;  
10 William Young; Vivienne Young;  
11 Albert Berriz; Paula Beniz; and  
12 Robert Thompson  
13

14 **I. INTRODUCTION**

15 This matter was generated by a complaint filed with the Federal Election Commission  
16 ("the Commission") by Mark Brewer, Chairman of the Michigan Democratic Party. *See*  
17 2 U.S.C. § 437g(a)(1). The complaint alleges that the Michigan Republican State Committee  
18 ("Michigan Republican Party" or "MRP"), its Chairman, Ron Weiser, the Republican National  
19 Committee ("RNC"), its Chairman, Michael Steele, former RNC Chief of Staff Ken McKay, and  
20 17 individual donors (collectively "Respondents") knowingly and willfully evaded individual  
21 contribution limits, which resulted in excessive contributions to the MRP in violation of the  
22 Federal Election Campaign Act of 1971, as amended ("the Act"). According to the complaint,  
23 the excessive contributions resulted when Michigan-based donors who made direct contributions  
24 to the MRP subsequently made direct contributions collectively totaling \$465,000 to the RNC in  
25 December 2009 that were earmarked for the MRP. The complaint alleges that the RNC, in turn,  
26 transferred those earmarked funds to the MRP in January and February 2010.

27 As discussed in further detail below, the allegation that the individual donors knowingly  
28 and willfully evaded individual contribution limits is supported only by a single anonymous

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1 source in a news article and is rebutted by specific sworn denials submitted by the Respondents.  
2 Therefore, the Commission found no reason to believe that the 17 individual donors violated the  
3 Act by making excessive contributions in violation of 2 U.S.C. § 441a(a)(1).

4 **II. FACTUAL AND LEGAL ANALYSIS**

5  
6 **A. Factual Summary**

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8 The complaint alleges that contributions made to the RNC by some of the MRP's donors  
9 in late 2009 were made as part of a scheme to knowingly and willfully evade the contribution  
10 limits of the Act. The complaint cites to a news article from *The Daily Caller* internet news site  
11 ("*Daily Caller* article") and to the RNC's disclosure reports filed with the Commission in  
12 support of the allegations.

13 The *Daily Caller* article describes a scheme in which the RNC and the MRP agreed that  
14 if the state party could raise half a million dollars for the RNC "to increase the RNC's 2009  
15 fundraising numbers," then the RNC would "give the money back" to the MRP in the next  
16 calendar year.<sup>1</sup> The article quotes an unnamed "former RNC official" who explained that, "[i]t  
17 was a known secret that a deal had been struck on the topic," that it would benefit the MRP by  
18 "getting guaranteed money," and benefit the RNC by helping it reach fundraising goals, and  
19 allow donors "to give more money to the Michigan state party than the federal limit of 10k."  
20 The complaint alleges that Michael Steele, Chairman of the RNC, and Ken McKay, RNC Chief  
21 of Staff, were "behind the deal with Michigan party chair Ron Weiser." Complaint at 2.

22 The complaint also cites to the RNC's disclosure reports filed with the Commission,  
23 which show that 17 Michigan donors contributed the maximum allowed to the RNC

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<sup>1</sup> See Alex Pappas, *Former RNC official: Steele struck a deal with Michigan GOP to increase fundraising numbers, possibly to circumvent federal fundraising limits*, April 7, 2010, <http://dailycaller.com/2010/04/07/former-rnc-official-steele-struck-a-deal-with-michigan-gop-to-increase-fundraising-numbers-possibly-to-circumvent-federal-funding-limits> (last visited September 10, 2010).

1 totaling \$456,000, on December 23 and December 31, 2009. Complaint at 2. Disclosure reports  
2 also showed that the RNC made approximately \$500,000 in disbursements to the MRP in  
3 January and February 2010. *Id.* According to disclosure reports, five of the individual donors  
4 had contributed the maximum to the MRP in 2009.

5       The *Daily Caller* article indicates that Weiser, through a spokeswoman, denied any sort  
6 of deal stating that, "Michigan donors have a long history of contributing to the RNC and the  
7 RNC has a long history of supporting Michigan GOP efforts." However, the article noted that an  
8 MRP representative stated that she was not aware of any specific December fundraising events to  
9 explain the large donations, indicating only that many large donors make contribution decisions  
10 at the end of the year. The article also notes that none of Michigan's senators are up for election  
11 in 2010, that the state's primaries are held later than other states, yet Michigan received the most  
12 money from the RNC of all the states in January and February 2010. In response, an MRP  
13 representative apparently explained to the *Daily Caller* that the Michigan GOP began its victory  
14 program "earlier than any other state in the country." Complaint Attachment (*Daily Caller*  
15 Article).

16       All of the respondents deny violations of the Act. The MRP, Ron Weiser, Ken McKay,  
17 and fourteen (14) of the individual contributors submitted a joint response to the complaint  
18 ("MRP Response") that included 17 sworn affidavits.<sup>2</sup> The response challenges the sufficiency  
19 of the complaint because it was based on information from a press article quoting an anonymous  
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<sup>2</sup> The fourteen contributors included in the MRP Response are the following: 1) Gaylen Byker, 2) Thomas Celani, 3) Vicki Celani, 4) Michael Ferrantino, 5) Kellie Ferrantino, 6) Michael Jandernoa, 7) Susan Jandernoa, 8) John Kennedy, 9) Nancy Kennedy, 10) Robert Lynas, 11) Joyce Lynas, 12) William Parfet, 13) William Young, and 14) Vivienne Young.

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1 source and denies that there was any illegal scheme to evade the \$10,000 annual limit to the  
2 MRP. MRP Response at 2, Weiser Affidavit at ¶ 3, and McKay Affidavit at ¶ 3. The response  
3 explains that Chairman Weiser solicited contributions for the RNC from nine of the 17 named  
4 respondents and that Robert Schostak, the MRP's Finance Chairman, solicited one additional  
5 contribution. The MRP Response acknowledges that certain Michigan-based donors made  
6 contributions to the RNC and that the RNC transferred funds to the MRP in January and  
7 February 2010, but it asserts that the complaint distorts the contribution and transfer history in an  
8 effort to demonstrate a link between the contributions and transfers. MRP Response at 3-4. It  
9 points out that, in addition to the \$456,000 in contributions from 17 individuals identified in the  
10 complaint, nine other Michigan residents made maximum contributions of \$30,400 each to the  
11 RNC, totaling \$273,600, from November 18 through December 23, 2009. *Id.* The response also  
12 states that the complainant ignored seven transfers from the RNC to the MRP that were  
13 completed between June 2009 and May 2010, totaling \$256,967.72. MRP Response at 5-6.

14 In response to the complainant's questioning of contributions made by donors who had  
15 never previously contributed to the RNC and by others who had never previously contributed the  
16 annual maximum, the MRP points out that 13 of the 17 named respondents had contributed to  
17 the RNC in the past, and 11 had previously contributed the maximum annual amount. MRP  
18 Response 3. The MRP also states that only six of the 17 individual contributors named in the  
19 complaint had contributed the maximum \$10,000 annual amount to the MRP in 2009.<sup>3</sup> *Id.* at 2.  
20 The Committee argues that "it is simply not the case that a history of lawful contributions, or a

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<sup>3</sup> While the MRP's disclosure reports indicate that only five of the 17 individual respondents had contributed the annual maximum to the MRP in 2009, they also show that another eight of the 17 respondents contributed \$9,000 to the MRP in 2009 and that most of those respondents also contributed the maximum to the MRP's Levin account. Four of the 17 respondents did not contribute to the MRP at all in 2009.

1 history of not making contributions, can properly be viewed as evidence of an 'illegal scheme' in  
2 an enforcement matter." *Id.*

3 Weiser's and McKay's affidavits each "unequivocally state" that there was never an  
4 illegal scheme to evade the \$10,000 annual limit to the MRP. Weiser and McKay Aff. at ¶ 3.  
5 They explain that they were "unaware of any conversations between the Individual Respondents  
6 and the RNC prior to the time that the contributions in question were made" during which the  
7 intended purpose of the contributions would have been discussed. Weiser and McKay Aff. at ¶  
8 4. Weiser also denies that he ever "suggest[ed] that the RNC would re-direct their contributions  
9 from the RNC to the MRP." Weiser Aff. at ¶ 5. In his affidavit, McKay describes a December  
10 2009 discussion with Weiser during which they discussed fundraising for the RNC but he avers  
11 that he "did not discuss or otherwise propose or consider any program in which Chairman  
12 Weiser would raise funds for the RNC that would then be transferred dollar-for-dollar to the  
13 MRP." McKay Aff. at ¶ 5.

14 The sworn affidavits provided by the individual contributors are virtually identical to  
15 each other.<sup>4</sup> The donors state that their contributions to the RNC were voluntary, that their  
16 contributions were "not earmarked in any way and [were] made with no conditions or  
17 contingencies; there were absolutely no strings attached to [the] contribution," that they did not  
18 retain control over their contributions once they made them, were "never told with any  
19 specificity how the Republican National Committee would use my contribution," and that prior  
20 to making their contributions they never spoke with anyone from the RNC about their  
21 contributions. *See* Affidavits Attached to MRP Response. Some of the donors indicated that

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<sup>4</sup> The affidavit of Thomas Celani differs slightly from the others in that it explains that because his business activities prevented him from donating in Michigan elections, he made his contribution to the RNC with the condition that "no funds would come back to Michigan." Celani Aff. at ¶ 4.

1 they had been solicited by Weiser and/or Schostak, but their affidavits did not provide any details  
2 of those discussions.

3 Separate responses submitted by the remaining three individual contributors, Albert and  
4 Paula Berriz and Robert Thompson, also state that their contributions were voluntary, made  
5 without conditions, that they did not know how the RNC would use their contributions, and that  
6 other than Weiser's solicitation, they had no discussions about the contributions with anyone  
7 else. See Berriz Affidavits and Thompson Response and Affidavit. Thompson's response also  
8 challenges the sufficiency of the complaint. Thompson Response at 1-2; see fn. 5 *infra*.

9 The response submitted on behalf of the RNC and Chairman Michael Steele included  
10 sworn affidavits from Steele, Lindsey Drath, Director of the RNC's major donor program, and  
11 Allyson Schmeiser, Deputy Director of the major donor program. In their response, Steele and  
12 the RNC request dismissal of the complaint for the failure to state a violation and failure to  
13 provide specific facts as evidence of the alleged scheme, and on the grounds that the independent  
14 transactions at issue (i.e., the individual contributions to the RNC and the RNC's transfers to the  
15 MRP) were permissible on their face. See RNC Response at 1-2. These respondents also argue  
16 that there is no evidence in support of a violation under an earmarking theory or as a contribution  
17 in the name of another. *Id.* at 2-3. The RNC response challenges the complainant's implication  
18 that contributions from first-time donors are suspicious, noting that the RNC had 364,890 first-  
19 time contributors in 2009. The RNC Response also notes that the complaint ignores 1,397 total  
20 contributions from Michigan and 51,396 contributions from across the country made to the RNC  
21 during the time period that is the focus of the complaint. RNC Response at 3.

22 In his affidavit, Steele denies knowledge of an illegal scheme to evade the \$10,000  
23 annual individual limit to the federal account of the MRP, that any RNC employees discussed the

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1 purpose of a contribution with any contributors named in the complaint, or that any MRP  
2 representative ever told contributors that their contributions would be redirected to the MRP.  
3 Steele Aff. at ¶¶ 3-6. Steele also specifically states that he never had any discussions with any of  
4 the contributors named in the complaint regarding the purpose of their contributions. *Id.* at ¶ 2.  
5 However, he does not indicate whether RNC and MRP representatives ever discussed how the  
6 contributions at issue would be used.

7 Drath's and Schaneiser's affidavits were substantially similar. They explain that in their  
8 positions with the RNC they reviewed and processed contribution checks from the RNC's major  
9 donors and as a result, they reviewed the contributions at issue. Drath and Schmeiser Affidavits  
10 at ¶¶ 1-4. They each indicate that none of the contribution checks at issue was earmarked or  
11 designated for any purpose, including for the MRP. Drath and Schmeiser Aff. at ¶ 5. They also  
12 state that they never spoke to any of the contributors named in the complaint prior to their  
13 contributions, never discussed the purpose for which the contributions would be used and had no  
14 knowledge regarding the contributors' expectations or of any discussions between the  
15 contributors and MRP representatives. Drath and Schmeiser Aff. at ¶¶ 6-7.

#### 16 B. Analysis

17 Under the Act, an individual is permitted to contribute \$10,000 per calendar year to a  
18 state political party and \$30,400 to a national political party committee. *See*  
19 2 U.S.C. § 441a(a)(1)(B) and (D); *see also Price Index Increases for Contribution and*  
20 *Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 74 Fed. Reg. 7435, 7437  
21 (February 17, 2009). In addition, the Act permits unlimited transfers between a national party  
22 committee and a state political party committee. 2 U.S.C. § 441a(a)(4). Notwithstanding the  
23 fact that the individuals' direct contributions to the MRP and the RNC complied with the limits

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1 of 2 U.S.C. § 441a(a)(1)(B) and (D) on their face, the complaint alleges that the RNC  
2 subsequently transferred the funds it received from the 17 contributors to the MRP pursuant to a  
3 prior arrangement, resulting in excessive contributions to the MRP by those individuals.<sup>5</sup>  
4 Complainants appear to argue that the contributions made by the individual contributors to the  
5 RNC were intended to go back to the MRP, and should therefore be considered against the  
6 \$10,000 contribution limit to state parties, in aggregation with their direct contributions to the  
7 MRP.

8 Respondents have sufficiently rebutted the allegation that the individual respondents  
9 made excessive contributions to the MRP. The *Daily Caller* article relies on a single,  
10 anonymous source for the allegation that the MRP and RNC devised a plan to allow individual  
11 donors to evade the \$10,000 annual limit on contributions to the MRP by giving to the RNC. See  
12 *supra* at 2. All of the individual respondents, in sworn affidavits, deny that they earmarked their  
13 contributions to the MRP or that they had any knowledge how the RNC planned to use their  
14 contributions. See *id.* at 5-6. Weiser, in a sworn affidavit, denies telling contributors from  
15 whom he solicited contributions to the RNC that the RNC would direct these contributions to the  
16 MRP. See *id.* at 4-5. Steele and McKay have also denied that the RNC made representations to  
17 individual contributors that their contributions would be transferred to the MRP. See *id.* at 5-7.  
18 Further, two RNC representatives who examined every major donor's check have averred that no  
19 such designations were included on the checks or accompanying documentation. *Id.* at 7;

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<sup>5</sup> Some of the Respondents also question the sufficiency of the complaint, arguing that the complaint is speculative, based on an anonymous source rather than on personal knowledge, and fails to contain a clear recitation of the facts giving rise to a violation. See MRP Response at 1-2, RNC Response at 1-2 and Thompson Response at 1-2. However, the complaint filed in this matter complied with the Commission's statutory and regulatory requirements for legal sufficiency. 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(b). The complaint was signed, sworn, identifies the complainant and the sources of his information in support of the allegations (*i.e.*, a press report and Commission disclosure reports), and provides a recitation of facts that may give rise to a violation of the Act. The fact that the complaint relies partly on a press article quoting an anonymous source does not in and of itself render the complaint insufficient on its face. See, e.g., MUR 6023 (McCain/Loeffler Group).

11 C.F.R. § 110.6(b). The single anonymous source in a news article is not enough information to contradict the Respondents' specific statements. Accordingly, there is insufficient evidence to indicate that the contributors violated the Act's contribution limits by making contributions to the RNC with the understanding that those contributions would be directed to the MRP.

1. Conclusion

Accordingly, there is no reason to believe that Albert Berriz; Paula Berriz; Gaylen Byker; Thomas Celani; Vicki Celani; Michael Ferrantino; Kellie Ferrantino; Michael Jandernoa; Susan Jandernoa; John Kennedy; Nancy Kennedy; Robert Lynas; Joyce Lynas; William Parfet; Robert Thompson; William Young; and Vivienne Young violated 2 U.S.C. § 441a(a)(1).

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